

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JASMINE BESISO and MYRONE POWELL,

Plaintiff

v.

MATT BARNES and DEMARCUS COUSINS,

Defendants.

Case No. 16-CV-9461

Answer

Defendant, DeMarcus Cousins, by his attorneys, WADE CLARK MULCAHY, as and for an answer to the plaintiffs' complaint, respectfully alleges:

PRELIMINARY STATEMENT

1. Denies and refers all matters of law to the Honorable court.

JURISDICTION

2. Denies and refers all matters of law to the Honorable court.

VENUE

3. Admits.

JURY DEMAND

4. The demand for a jury trial in paragraph 4 requires no response.

PARTIES

5. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

6. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

7. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

8. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

9. Admits.

10. Admits.

FACTS

11. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

12. Admits.

13. Denies upon information and belief.

14. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

15. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

16. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

17. Denies.

18. Denies upon information and belief.

19. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

20. Denies.

21. Denies.

22. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

23. Denies.

24. Denies that defendant DeMarcus Cousins “boast[ed]” about the alleged assault and battery and otherwise allege that the video footage speaks for itself.

25. Denies upon information and belief.

**AS AND FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT MATT BARNES
FOR ASSAULT PURSUANT TO NEW YORK STATE LAW**

26. Defendant DeMarcus Cousins repeats and reiterates each and every denial heretofore made in this answer to the paragraphs of the complaint designated "1" through "25" inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the complaint designated "26".

27. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

28. Denies upon information and belief.

29. Denies upon information and belief.

**AS AND FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANT MATT
BARNES FOR BATTERY PURSUANT TO NEW YORK STATE LAW**

30. Defendant DeMarcus Cousins repeats and reiterates each and every denial heretofore made in this answer to the paragraphs of the complaint designated "1" through "29" inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the complaint designated "30".

31. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

32. Denies upon information and belief.

33. Denies upon information and belief.

**AS AND FOR A THIRD CAUSE OF ACTION AGAINST DEFENDANT DEMARCUS
COUSINS FOR ASSAULT PURSUANT TO NEW YORK STATE LAW**

34. Defendant DeMarcus Cousins repeats and reiterates each and every denial heretofore made in this answer to the paragraphs of the complaint designated "1" through "33" inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the complaint designated "34".

35. Denies.

36. Denies.

37. Denies.

**AS AND FOR A FOURTH CAUSE OF ACTION AGAINST DEFENDANT DEMARCUS
COUSINS FOR BATTERY PURSUANT TO NEW YORK STATE LAW**

38. Defendant DeMarcus Cousins repeats and reiterates each and every denial heretofore made in this answer to the paragraphs of the complaint designated "1" through "37" inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the complaint designated "38".

39. Denies.

40. Denies.

**AS AND FOR A FIFTH CAUSE OF ACTION AGAINST MATT BARNES FOR
ASSAULT PURSUANT TO NEW YORK STATE LAW**

41. Defendant DeMarcus Cousins repeats and reiterates each and every denial heretofore made in this answer to the paragraphs of the complaint designated "1" through "40" inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the complaint designated "41".

42. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

43. Denies upon information and belief.

44. Denies upon information and belief.

**AS AND FOR A SIXTH CAUSE OF ACTION AGAINST MATT BARNES FOR
BATTERY PURSUANT TO NEW YORK STATE LAW**

45. Defendant DeMarcus Cousins repeats and reiterates each and every denial heretofore made in this answer to the paragraphs of the complaint designated "1" through "44" inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the complaint designated "45".

46. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

47. Denies upon information and belief.

48. Denies upon information and belief.

**AS AND FOR A SEVENTH CAUSE OF ACTION AGAINST MATT BARNES FOR
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS PURSUANT TO NEW
YORK STATE LAW**

49. Defendant DeMarcus Cousins repeats and reiterates each and every denial heretofore made in this answer to the paragraphs of the complaint designated "1" through "48" inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the complaint designated "49".

50. Denies knowledge and information sufficient to form a belief as to the truth of this allegation.

51. Denies upon information and belief.

52. Denies upon information and belief.

**AS AND FOR A EIGHTH CAUSE OF ACTION AGAINST DEFENDANTS MATT
BARNES AND DEMARCUS COUSINS FOR INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS PURSUANT TO NEW YORK LAW**

53. Defendant DeMarcus Cousins repeats and reiterates each and every denial heretofore made in this answer to the paragraphs of the complaint designated "1" through "52"

inclusive, with the same force and effect as if set forth here more particularly at length, all in response to the paragraph of the complaint designated "53".

54. Denies.

55. Denies.

56. Denies upon information and belief.

57. Denies upon information and belief.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

58. The complaint fails to state a claim upon which relief may be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

59. This action is barred or limited because defendant acted in defense of another person facing irreparable harm.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

60. Pursuant to CPLR Article 16, the liability of defendant, DeMarcus Cousins, to the plaintiff herein for non-economic loss is limited to defendant, DeMarcus Cousins, equitable share determined in accordance with the relative culpability of each person causing or contributing to the total liability for non-economic loss.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

61. Plaintiffs have recovered the costs of medical care, dental care, custodial care, rehabilitation services, loss of earnings and other economic loss and any such future loss or expense will, with reasonable certainty, be replaced or indemnified in whole or in part from collateral sources. Any award made to plaintiffs shall be reduced in accordance with the provisions of CPLR 4545(c).

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

62. Any damages sustained by the plaintiffs were caused by the culpable conduct of the plaintiff(s), including comparative negligence, assumption of risks, breach of contract and not by the culpable conduct or negligence of this answering defendant. But if a verdict of judgment is awarded to the plaintiffs, then and in that event the damages shall be reduced in the proportion which the culpable conduct attributable to the plaintiffs bears to the culpable conduct which caused the damages.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

63. Plaintiffs may have failed to mitigate damages.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

64. Plaintiffs alleged loss and damage, if any, resulted wholly and solely from the fault, neglect and want of care of the plaintiffs or persons or parties other than defendant, for whose acts said defendant is not liable or responsible and not as a result of any negligence.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

65. This defendant is entitled to a set-off if any tortfeasor has or will settle with plaintiffs pursuant to G.O.L. 15-108.

AS AND FOR AN NINTH AFFIRMATIVE DEFENSE

66. Whatever injuries and/or damages sustained by the plaintiffs at the time and place alleged in the complaint, were due to the acts of parties over whom the defendant was not obligated to exercise any control or supervision.

AS AND FOR AN TENTH AFFIRMATIVE DEFENSE

67. The amount of punitive damages sought is unconstitutionally excessive, and disproportionate to defendant's conduct under the United States Constitution, and thus, violates

the Due Process Clause of the Fourteenth Amendment, U.S. Const., Amend. XIV, Section 1, and the Due Process Causes of the New York State Constitution, Article I, Section 6.

AS AND FOR AN ELEVENTH AFFIRMATIVE DEFENSE

68. Any award of punitive damages based upon vague and undefined standards of liability would violate the Due Process Clause of the Fourteenth Amendment, U.S. Const. Amend. XIV, Section 1, and the Due Process Clause of the New York State Constitution, Article I, Section 6.

AS AND FOR AN TWELFTH AFFIRMATIVE DEFENSE

69. Any award of punitive damages based upon any standard of proof less than "clear and convincing" evidence would violate the Due Process Clauses of the Fourteenth Amendment of the U.S. Const., Amend. XIV, and the Due Process Clauses of the New York State Constitution, Article I, Section 6.

WHEREFORE, defendant, DeMarcus Cousins demands judgment dismissing the complaint herein together with the costs and disbursements of this action.

Date: May 5, 2017

/s/
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